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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/733,263

12/12/2003

Albert Duranton

118074

8661

25944

7590

10/26/2006

OLIFF & BERRIDGE, PLC

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EXAMINER

MOHANDESI, JILA M

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 10/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/733,263

Applicant(s)

DURANTON, ALBERT

Examiner

Jila M. Mohandesi

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 15-34 and 38-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 35-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>04/26/04 &amp; 09/05/05</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Species I, claims 1-14 and 35-37 in the reply filed on 10/06/2006 is acknowledged. The traversal is on the ground(s) that subject matter of all the species is sufficiently related that the entire application could be examined without serious burden on the examiner. This is not found persuasive because the species are distinct and examining all the different species will put a serious burden on the examiner.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 16-34 and 38-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim.

### ***Priority***

3. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 10/733,263, filed on 12/12/2003. ***Information Disclosure Statement***

4. The information disclosure statement (IDS) submitted on 04/26/04 and 09/05/2006 was considered by the examiner.

### ***Claim Objections***

5. Claim 37 is objected to because of the following informalities: In claim 37, lines 3 and 4, the phrase "30° to 40° " should be - - 30° C to 40° C - -. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-6, 10, 12-13 and 36-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Christy et al. (US patent 5,786,578). Christy '578 discloses a device comprising: a receptacle (microwaveable plastic container 2 & 3) containing a single dose of treatment substance (microwave-heatable exercise putty); and an indicator (thermochromic heat sensitive indicator strip 4) configured to change state as a function of temperature. See Figures 1-4 embodiments and column 5, lines 12-35.

8. Claims 1-6, 9, 12-14 and 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Moore (US patent 6,405,867). Moore'867 discloses a device comprising: a receptacle (satchel 30) containing a single dose of treatment substance (small quantities of sunscreen); and an indicator (thermochromic dye included within a layer of material that is laminated to sidewall 31 of satchel 30) configured to change state as a function of temperature. See Figure 4 embodiment and column 359-65.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 11 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore '867 in view of Pitschka (US patent 6,364,112). Moore '867 as described above discloses all the limitations of the claims except for a fixing member allowing the receptacle to be fixed onto other surfaces. Pitschka '112 discloses that it is desirable to provide fixing member (adhesive) on pouches to be fixed onto other surfaces.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a fixing member to the pouch/receptacle of Moore '867 as taught by Pitschka '112 to secure the promotional pouch to other surfaces to prevent loss of the pouch.

12. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moore '867 in view of Dimelis et al. (US patent 5,960,947). Moore '867 as described above

discloses all the limitations of the claims except for a flexible support fixed onto the receptacle for allowing the receptacle to be fixed onto other surfaces. Dimelis '947 discloses that it is desirable to provide a flexible support on pouches/receptacles for mounting the pouch onto other surfaces. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a flexible support to the pouch/receptacle of Moore '867 as taught by Dimelis '947 to secure the promotional pouch to other surfaces to prevent loss of the pouch.

13. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moore '867 in view of Bradley et al. (US patent 4,408,557). Moore '867 as described above discloses all the limitations of the claims except for indicator configured to release a volatile odorous substance. Bradley '557 discloses an indicator in which the method of indication can be other than the use of dyes and the appearance of words and symbols. The indicator can contain agents, which, at the combination of integration cycle, release strong odor producing vapors to alert people. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide agents to the indicator of Moore'867 which, at the combination of integration cycle, release strong odor producing vapors as taught by Bradley '557 to alert the people insofar as they are art-recognized equivalents.

### ***Conclusion***

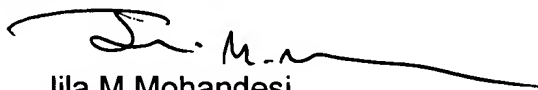
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are devices analogous to applicant's instant invention.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M. Mohandesi whose telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jila M Mohandesi  
Primary Examiner  
Art Unit 3728

JMM  
October 24, 2006